SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 428

H. CHASSANIOL ET AL., APPELLANTS,

vs.

CITY OF GREENWOOD

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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IN SUPREME COURT OF MISSISSIPPI

No. 30494

H. CHASSANIOL, Appellant,

vs.

CITY OF GREENWOOD, Appellee

PETITION FOR APPEAL—Filed Aug. 10, 1933

To the Honorable Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi:

The above named H. Chassaniol and R. F. Sabin, B. B. Provine and W. F. Levy, sureties on the appeal bond to the Supreme Court of the State of Mississippi, all resident citizens of Leflore County, Mississippi, feeling aggrieved by the judgment rendered in the foregoing and above entitled cause on the 5th day of June, 1933, do hereby pray an appeal from said judgment to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and they pray that their appeal be allowed and that citations may issue as provided by law, and that a transcript of the record, and all other proceedings and documents upon which said judgment was rendered, duly authenticated, be sent to the Supreme Court of the United States under the law and rules of such cases made and provided; and your petitioners further pray that the proper order relating to the proper security therefor be made.

As in duty bound your petitioners will ever pray.

Edward W. Smith, Ward Allen, Marcellus Green, Samuel Green, Attorneys for Petitioners.

[File endorsement omitted.]

[fol. 2] IN SUPREME COURT OF MISSISSIPPI

No. 30494

H. CHASSANIOL

vs.

CITY OF GREENWOOD, Appellee

ORDER ALLOWING APPEAL—Filed Aug. 10, 1933

On petition of H. Chassaniol, appellant in the above styled cause, and R. F. Sabin and B. B. Provine and W. F. Levy, sureties on his appeal bond in said cause, it is ordered that an appeal to the Supreme Court of the United States, sitting in the City of Washington, D. C., from the judgment heretofore filed and entered herein in the Supreme Court of Mississippi, on the 5th day of June, 1933, be, and the same is hereby allowed, and it is further ordered that a certified copy of the transcript of the record and all other proceedings herein be forthwith transmitted to said Supreme Court of the United States; and it is further ordered that the bond on appeal be fixed at the sum of five hundred dollars ($500.00), conditioned as required by law.

Sydney Smith, Chief Justice of the Supreme Court of Mississippi.

Aug. 9th, 1933.

[File endorsement omitted.]

[fols. 3 & 4] Bond on appeal for $500.00, approved and filed Aug. 10, 1933, omitted in printing.

[fol. 5] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 10, 1933

To the Honorable Tom Q. Ellis, Supreme Court Clerk:

The appellants, H. Chassaniol, and B. B. Provine, R. F. Sabin, and W. F. Levy, sureties on the appeal bond in the state court, having perfected their appeal of the above styled cause from the Supreme Court of the State of Mississippi to the Supreme Court of the United States, you

will please, in making the record for this appeal, include in said record the following:

1. Appellant's bill of exceptions to the action of the City Council of the City of Greenwood upon his application for a refund of taxes.

2. Final judgment of the Circuit Court of Leflore County, Mississippi.

3. Appeal bond to the Supreme Court of Mississippi.

4. Assignment of errors in Supreme Court of Mississippi.

5. The judgment and opinions of the Supreme Court of Mississippi, including the dissenting opinion of Justice Anderson.

6. Judgment of Supreme Court of Mississippi on suggestion of error.

7. The appellate proceedings herein to the Supreme Court of the United States, including petition for appeal, assignment of errors, statement of jurisdiction, order granting the appeal, appeal bond with the approval thereof, notice to appellee required by Sec. 2 of U. S. Sup. Ct. Rule 12 and waiver of citation by appellee, and this præcipe.

[File endorsement omitted.]

[fols. 6-24] This the 8 day of August, 1933.

Edward W. Smith, Ward Allen, Marcellus Green, Samuel Green, Attorneys for Appellant.

I herewith acknowledge the service upon me of a copy of the above and foregoing præcipe. This the 9 day of August, 1933.

J. A. Lauderdale, Assistant Attorney General of Mississippi, by A. H. Bell; A. H. Bell, W. S. Wardman, Attorneys for Appellee, by A. H. Bell.

[fol. 25] [File endorsement omitted]

IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 10, 1933

Now comes H. Chassaniol, and B. B. Provine, R. F. Sabin and W. F. Levy, sureties on his appeal bond, and assign errors in the above entitled cause as follows:

1. The state court erred in holding that the defendant appellee was not liable to appellant for all amounts of taxes sought to be refunded, and in entering judgment for appellee in this, that:

(a) The undisputed facts as reflected by the record show that the appellant was engaged solely and exclusively in interstate commerce, and the tax sought to be recovered by appellant by the terms of its imposition taxed the privilege of engaging in such commerce.

2. The state court erred in placing upon the statutes and ordinances involved in this case a construction which would render such statutes and ordinances constitutional, as not contravening the commerce clause of the federal constitution, in that as applied to the business of appellant no such construction is possible.

3. The state court erred in holding that the record con- [fol. 26] tained agreements of the parties constituting merely conclusions from facts and the understanding of the parties as to the general course of business dealing by which it was not bound, in that the record contains no such agreements, conclusions and understandings, but on the contrary contains only proof of specific facts from which there arises one logical conclusion, to-wit: that appellant was engaged solely in interstate commerce.

4. The state court erred in holding that there was any intrastate commerce in the business of appellant, and in holding that the statutes and ordinances involved in this cause were valid and constitutional because limited to transactions in intrastate commerce. The state court was not called upon to determine whether or not, under circumstances different from those disclosed by the record, the taxing statute might be constitutional as against a person engaged in intrastate commerce, but was only called upon to determine whether appellant was engaged in intrastate or in interstate commerce.

5. The state court erred in holding that the construction of the statutes and ordinances involved in this cause is for the state court alone, and that Federal Courts are bound thereby, in that the scope and extent of the statutes and ordinances are for the state court but such scope and extent being ascertained by the state court, the application

of such statutes and ordinances and the determination of the question as to the nature of the commerce engaged in by appellant is then for the Federal Courts.

6. And for other causes to be assigned.

Wherefore, appellants pray that the said judgment may [fols. 27 & 28] be reversed and for such other and further relief as to the court may seem just or proper.

This the 8th day of August 1933.

Edward W. Smith, Ward Allen, Marcellus Green, Samuel Green, Attorneys for Appellant.

[fols. 29-33] Service of the above and foregoing statement, together with the copies therein mentioned, is hereby acknowledged, and the appellee by its attorneys does hereby waive the issuance and service of a citation herein, and does hereby enter its voluntary appearance in said cause in the Supreme Court of the United States. This the 8th day of August, 1933.

J. A. Lauderdale, Asst. Attorney General of State of Mississippi, by A. H. Bell; A. H. Bell, W. S. Wardman, Jr., Attorneys for Appellee, by A. H. Bell.

[fol. 34] BEFORE CITY COUNCIL OF CITY OF GREENWOOD

Bill of Exceptions

Be it remembered, that at 7:30 P. M., on Tuesday, December 6, 1932, there was duly assembled and held a regular meeting of the City Council of the City of Greenwood, Leflore County, Mississippi, in the City Hall of said Municipality, the same being the proper time and place for said meeting; all of the members of said Council were present and voting, and present also were Bonner Duggan, Clerk of said Municipality, and A. H. Bell, Attorney for said Municipality.

At and during said meeting there was submitted and presented by H. Chassaniol his verified application for refund of money paid by the said H. Chassaniol as privilege license for conducting his business within said municipality, and which privilege license was and is alleged by the said

H. Chassaniol to have been erroneously paid. The said verified application is in the following words and figures, to-wit:

APPLICATION FOR REFUND OF ERRONEOUSLY PAID PRIVILEGE TAXES

To the City Council of the City of Greenwood, Mississippi:

The undersigned H. Chassaniol, applicant, trading as Chassaniol & Company, respectfully says that from and since September 1, 1931, he has engaged in the City of Greenwood, Leflore County, Mississippi, in the business of cotton buyer and seller; that on June 3rd, 1930, the said municipality adopted and enacted an ordinance levying upon the aforesaid business of applicant an annual privilege license of Fifty Dollars ($50.00), said ordinance being the same as is found of record in ordinance Book 3, at pages 241-243, of the record of ordinances of said municipality, a certified copy of said ordinance being hereto attached as "Exhibit A", and made a part hereof. On the first day of October, 1931, said municipality, acting through its officers and agents, and under the color and purported [fol. 35] authority of said ordinance, required and compelled applicant to pay for the privilege of conducting his said business for a period of one year from September 1st, 1931, a privilege license of Fifty Dollars ($50.00). Payment of said privilege license is evidenced by Privilege Tax License Receipt of said municipality No. 3007, a copy of which is hereto attached as "Exhibit B" and made a part hereof. Said payment was under protest, duly made by applicant, as is shown by pen and ink notation appearing in the face of said receipt. The original of said receipt will be produced by applicant at any time the same may be requested by the official board, or any other official, of said municipality.

On June 7th, 1932, the said municipality adopted and enacted an ordinance levying upon the aforesaid business of applicant an annual privilege license of Fifty Dollars ($50.00), said ordinance being the same as is found of record in Ordinance Book 5, at Pages 26-27, of the records of ordinances of said municipality, a certified copy of said ordinance being hereto attached as "Exhibit C", and made a part hereof. On the first day of September, 1932, said municipality, acting through its officers and agents,

and under the color and purported authority of the last ordinances aforesaid, required and compelled applicant to pay, for the privilege of conducting his said business for a period of one year from September 1st, 1932, a privilege license of Fifty Dollars ($50.00), payment of said privilege license is evidenced by Privilege Tax License Receipt of said municipality No. 3034, a copy of which is hereto attached as "Exhibit D", and made a part hereof. Said payment was under protest, duly made by applicant, as is shown by pen and ink notation appearing in the face of said receipt. The original of said receipt will be produced by applicant at any time the same may be requested by the official board, or any other proper official of said municipality.

Applicant respectfully requests the refunding of the [fol. 36] aforesaid sums, amounting to a total of $100.00, under the provisions of Section 2591 of the Mississippi Code of 1930, on the grounds that the aforesaid ordinances, and both of them, are, when applied to applicant's said business, a burden upon interstate commerce, and contravene Article I, Section 8, Clause 3, of the Constitution of the United States, commonly called the commerce clause thereof. Applicant says that his said business is interstate commerce because of the following facts, to-wit:

The Mississippi Delta, an alluvial body of land located within the confines of the State of Mississippi, comprises about 6,650 square miles; it is bounded on the north by the northern boundary of the State, and extends along the western boundary of said State in a southerly direction, for approximately 190 miles, the western boundary thereof being the Mississippi River. It varies in width from from a few yards to approximately 50 miles. The said Mississippi Delta was formed by the action of the Mississippi River in overflowing the same, and gradually building it up to a height in which it became susceptible of cultivation. The character of the soil in said Mississippi Delta makes it peculiarly adaptable to the growing of what is commonly known as Delta-type, long staple cotton, which is a cotton, and a peculiar type of cotton, recognized throughout the world in the cotton trade as being of a superior type, character, and strength. Yarns spun from the famous Egyptian and Sea Island long staple cottons.

The City of Greenwood is centrally located in said Mississippi Delta, which is exclusively an agricultural community, and its principal crop is that of said long staple cotton. It produces an average crop of approximately 700,000 bales, which is more than forty per centum of the average annual production of cotton in the State of Mississippi, and said cotton is the only product which is raised by the agriculturalists located in said Delta, and which is sold upon the open market, and is the source from which is produced the case revenue out of which practically the entire populace of the said Delta derives its livelihood.

[fol. 37] All of said cotton, when it repens in the field, is picked by hand, but through a ginnery, by the process of which the lint is removed from the seed, and the lent cotton, (in which plaintiff deals exclusively as hereinafter alleged) is wrapped and tied into bales weighing approximately 500 pounds each. A bale of cotton, when wrapped and tied at the gin, is approximately 5 feet in length, 3½ feet wide, and 4½ feet in height.

By general and uniform custom, bales of cotton from the gin are transported by rail or otherwise as hereinafter described, to compresses. A compress is a combination storage warehouse and plant equipped with machinery designed to press bales of cotton under extremely high pressure, for the purpose of reducing its size. A bale, after compression is only about 18 inches thick, the purpose of compression being that the railroads and carriers by water, in interstate and foreign commerce, as hereinafter described, are enabled thereby to load into cars and ships, for such carriage, approximately three times as much cotton after compression as otherwise would be possible. Approximately 30% of the cotton which is bought and sold upon said market in Greenwood, is transported to the compress hereinafter described by automobile, truck, or wagon, and delivered by that means to said compress. Approximately 70% of said cotton is transported to said compresses by rail on the lines of the Yazoo & Mississippi Valley Railroad Company and the Columbus & Greenville Railroad Company, which are both common carriers engaged in interstate commerce, and which are the only such carriers doing business at said market.

At Greenwood there are three compresses, owned and operated respectively by The Federal Compress & Ware-

house Company, a corporation existing under the laws of the State of Delaware, the Greenwood Compress Company, a corporation existing under the laws of the State of Mississippi, and Union Compress & Storage Company, a corporation, existing under the laws of the State of Tennessee. All of said Companies, with reference respectively to each [fol. 38] of said three compresses, have complied with all of the terms and provisions of an act of Congress, the short title of which is "The United States Warehouse Act", being Chapter 10, Title 7, U. S. C. A. The said companies complied with the terms of said United States Warehouse Act" for the reason that all of said cotton stored in said compresses and warehouses at Greenwood, Mississippi, and handled in the manner hereinafter described, was and is cotton stored and handled therein for interstate and foreign commerce, as will appear from the facts hereinafter recited.

When cotton is delivered to said compresses, the said compress companies issue to the owner thereof warehouse receipts, which receipts comply in all things with the terms and provisions of said Act of Congress. Said cotton is universally and invariably sold upon the market by transfer and delivery of said warehouse receipts in accordance with the terms of said act of Congress, and actual samples taken from said bales of cotton; said warehouse receipts being the evidence of the ownership of said Cotton. When cotton is delivered to the compresses is is graded and classed by persons licensed as classers by the United States Department of Agriculture, unless such grading and classing is waiver by the owner of the Cotton.

At Greenwood there exists an active market for the sale and purchase of said cotton between the farmers raising said cotton and applicant and others engaged in like business, who are purchasing the same with the invariable intention and purpose, as hereinafter alleged, of selling and transporting same in interstate and foreign commerce which is and was and has been a universal custom and course of business for more than 20 years past. The price upon which said cotton is sold upon said market at Greenwood, however, is determined by the value of said cotton upon certain cotton exchanges maintained respectively in the cities of New Orleans, Louisiana, New York, New York, and Liverpool England; and there are maintained in said

City of Greenwood, Mississippi, offices of brokers who re- [fol. 39] ceive daily by wire, for periods of approximately five hours each day, continuous quotations from said exchanges, which fix and determine the price at which cotton is sold upon said Greenwood market. All of said cotton, however, is bought by applicant and others engaged in like business, with the uniform purpose and intention (which is and has been the universal course of business) to transport the same in interstate and foreign commerce to cotton mills located in the states upon the Atlantic seaboard, to-wit: Georgia, South Carolina, North Carolina, and Tennessee; and the mills of the New England states, to-wit: Massachusetts, Rhode Island and Connecticut; and the mills of foreign countries. None of said cotton is spun or utilized within the confines of the State of Mississippi, or sold to or purchased by any consumer within the confines of the State of Mississippi.

As aforesaid, approximately 70% of said cotton is delivered by rail to said compresses at Greenwood, and applicant alleges that, upon the delivery of such cotton to said carriers by rail at points outlying said City of Greenwood, said cotton is thereupon placed in, and thereafter remains, in interstate commerce. Applicant, in this connection, alleges that the said carriers transport, by rail as aforesaid, the said cotton to said compresses at Greenwood, and it is there concentrated merely for the purpose of compression, and for the purpose of awaiting the determination of its final point of destination outside the State of Mississippi, When the destination of said cotton is determined, the said carriers load the same out on shipping instructions of the then owner, after having the said cotton compressed, and charge the through freight rate from the point of origin to the point of destination outside of the State of Mississippi, instead of charging the combined rate for carriage in intrastate commerce from the point of origin to Greenwood, plus the charge for carriage in interstate commerce from Greenwood to the point of destination. The said [fol. 40] charges are made by said carriers in accordance with the regulations prescribed by the Interstate Commerce Commission in pursuance of the act of Congress creating said commission, and the several amendments thereto. So, therefore, plaintiff alleges that 70% of said cotton is actually in the channels of interstate and foreign

commerce at the time of the original purchase of the same. Some growers ship all of their cotton to the compresses by rail as aforesaid; others transport all of their cotton to the compresses by truck, automobile, or wagon; while still others ship a portion of their cotton by rail and transport the remaining portion by truck, automobile, or wagon. In the general and uniform course of business hereinafter described, applicant buys or handles said cotton indiscriminately whether transported to the compresses by rail, or by truck, automobile or wagon, and in order to buy cotton so transported to the compresses by rail he is compelled to buy some cotton transported by truck, automobile, or wagon as aforesaid, for the reason that purchases of such cotton are necessary for the purpose of filing and completing orders which applicant has taken for cotton of particular grades and lengths of staples.

Applicant says that the general and uniform course of business in handling said cotton upon said market is had and done in the following manner:

The grower causes warehouse receipts, when cotton is delivered to the compress, to be issued either directly to himself or his agent, commonly called a cotton factor. Upon the Greenwood market there are a number of such factors and approximately 20 buyers and shippers who are engaged in the sole business of buying and selling, and shipping cotton in interstate and foreign commerce. The farmer or factor causes the actual bales of cotton to be samples, and the cotton is sold to the buyers and shippers upon said market upon the basis disclosed by the character of samples of said cotton, and by the endorsement and delivery of said cotton receipts evidencing the ownership of same, the price therefor being governed as aforesaid, by the markets in New York, New Orleans and Liverpool as aforementioned. [fol. 41] It is uniformly known and understood by the farmer, cotton factor, and buyer that the buyer is purchasing said cotton solely for the purpose of causing the same to be transported by rail and/or water to said points in the United States and foreign countries, where mills convert said cotton into textile products, as aforesaid. No cotton that is bought and/or sold upon the Greenwood market is utilized in the State of Mississippi but all of said cotton, as aforesaid, is transported for consumption in interstate and foreign commerce.

The general course and uniform custom among buyers, shippers and sellers, as well as the general course of busines, is that a buyer first enters into a contract for either the future of immediate delivery of a certain number of bales — cotton of a certain class, grade and staple, obligating himself by such contract to deliver to a mill in a foreign state or country such cotton at a given price. Thereupon, such buyer will go upon said market at Greenwood and purchase cotton of the kind and character which he is obligated to his customer to deliver, and will cause the delivery of said cotton in interstate and/or foreign commerce in accordance with the terms of his contract. A very small proportion of the cotton purchased by shippers and cotton buyers (not exceeding 10%) is bought when no contract for sale therefor exists as hereinabove alleged; but, in such cases, it is bought with the sole anticipation and intention on the part of the buyer (which intention is fully known to the farmer, buyer, and/or factor) to procure a sale of said cotton to a foreign cotton mill or foreign cotton merchants and to cause the same to be transported in interstate and/or foreign commerce as aforesaid, at such time as market conditions will justify. With reference to that proportion (not exceeding 10% as aforesaid) which the buyers purchase when they hold no contract for the sale thereof, applicant says such purchases are only a necessary incident to and concomitant of those purchases which are made for the purpose of filling specific contracts [fol. 42] already entered into by the buyers with mills located in states other than in Mississippi, and in foreign countries. All of such instances arise in cases where the grower insists on offering and selling in one transaction a specified number of bales of cotton of his own selection, and this is the usual and customary manner in which the growers sell their cotton. Without exception, the grades and staples of the lots of cotton offered for sale by the growers, are not uniform as between the various bales of cotton composing such lots. It very frequently happens that a small proportion of a lot of cotton, the purchase of which is contemplated by a buyer, is of a character of grade or staple which buyer cannot use in filling any existing order which he then holds. The buyer, however, cannot fill his orders without buying such lots of cotton, and he must buy such lots in their entirety because the grower will sell no other way. In this way the buyers accumulate

and carry on hand small stocks of cotton, not exceeding 10% of the total amount which they handle, but such accumulations are either sold promptly to other buyers on the Greenwood market who hold orders from mills outside the State of Mississippi for the type of cotton thus incidentally accumulated, or they are shipped by the buyer in interstate and foreign commerce as soon as he can obtain an order therefor in the usual course of his business.

Applicant says that all of his business is conducted in the manner aforesaid, and that such is the usual and ordinary and customary course of business in the buying and selling of cotton in the Mississippi Delta. Applicant says that the aforesaid ordinance of the City of Greenwood, and the statutes of the State of Mississippi under purported authority of which said ordinances were adopted, and all of them, constitute a burden upon interstate commerce, and an unlawful and unconstitutional burden upon the right of plaintiff to engage in such interstate and foreign commerce, and to pursue his occupation as aforesaid, and that the [fol. 43] several terms and provisions of said ordinances and statutes are repugnant to Article 1, Clause 3, of the Constitution of the United States, commonly known as the Commerce Clause thereof, in so far as they apply to applicant's business aforesaid.

H. Chassaniol, Applicant.

Duly sworn to by H. Chassaniol. Jurat omitted in printing.

EXHIBIT "A" TO APPLICATION

Minute Book 12, Page 239

An Ordinance Levying an Annual Tax on Privileges Conducted Within the Limits of the Municipality Known as the City of Greenwood to an Amount Equal to Fifty per Centum of the Annual Tax Imposed on Such Privileges by the State of Mississippi under Chapter 88 of the Laws of Mississippi for 1930 and Providing Penalties

"Be it ordained by the Council of the City of Greenwood, Leflore County, Mississippi:

Section 1. That there is hereby levied an annual tax on privileges carried on and conducted within the limits of [fol. 44] the municipality known as the City of Greenwood

by all persons, firms, corporations, businesses, callings and professions described in and mentioned in Chapter 88 of the Laws of Mississippi for 1930, to an amount equal to fifty per centum of the annual tax levied on privileges described in said Chapter on each person, firm, corporation, business, calling and profession carried on in municipalities of the third class, provided, however, that no such tax shall be levied on any privilege which under the provisions of said act may be duly licensed for state wide purposes, as therein provided.

Section 2. All municipal licenses shall be obtained from the City Clerk and Tax Collector at the City Hall and every person required to obtain a license for the privilege of engaging in any business included in Section 1 of this ordinance shall make application therefor to the City Clerk and Tax Collector, whose duty it shall be to issue a license to such person.

Section 3. All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by the terms of this ordinance, or who shall fail to renew during the month in which it is due the license on a business for which he has theretofore procured a privilege license, shall in each or either instance, be liable for double the amount of the tax required for such business and it is hereby made the duty of the City Tax Collector whose duty it is to collect the tax on such business, to collect the said tax penalties, issue a separate license for the tax for the penalty, and to endorse across the face of the license issued as a penalty the words "Collected as damages"; and the said Tax Collector shall account for all such penalties as required to account for other privilege licenses, provided, however, that the provisions of this ordinance shall not be construed as infringing upon any statutory power of any State officer to collect due and unpaid licenses as now or may be provided for by the laws of the State of Mississippi. In addition to the hereinabove described penalty the delinquent taxpayer shall be guilty of a misdemeanor and [fol. 45] may be fined on conviction an amount not exceeding Fifty Dollars (50.00).

Section 4. The Privilege licenses herein provided shall be and constitute a personal privilege to the person named

therein to conduct the business specified in the license and shall not be transferable to any other person. No change in the name of the firm nor the taking in of a new partner nor the withdrawal of one or more of the firm shall be considered as commencing business but if any one or more of the partners remain in the firm the business shall be regarded as continued.

Section 5. It is the intention of this ordinance to levy an annual privilege tax on all privileges mentioned in and described in Chapter 88 of the Laws of Mississippi for 1930 authorized by said Act to be levied by municipalities having a population of between ten thousand and fifteen thousand inhabitants, being Class Three, in which the municipality of Greenwood is classed, and no privilege tax shall be imposed or levied not so authorized to be imposed and levied by municipalities of the third class according to said act and all exemptions therein mentioned shall be allowed under the terms of this ordinance.

Section 6. That if for any reason any section, paragraph, provision, clause, or part of this ordinance shall be held unconstitutional or invalid that fact shall not affect or destroy any other section, paragraph, provision, clause or part of this ordinance not in and of itself invalid but the remaining portion hereof shall be in force without regard to that so invalidated; and all ordinances in conflict herewith are hereby repealed.

Section 7. That for the immediate and temporary preservation of the public health, peace and safety and for the reasons of providing regular tax on all privileges conducted in the municipality in accordance with the new State Laws, it is ordered that this ordinance be enforced at and from the date of its passage.

Passed and approved this the 3rd day of June, 1930.

John Ashcraft, Mayor. (Seal.)

[fol. 46] Certified by Bonner Duggan, City Clerk.

The foregoing ordinance was introduced by Mayor John Ashcraft, after being reduced to writing, read and considered by sections at a regular and public meeting of the Council of the City of Greenwood, and a vote on its final passage was taken by sections by yeas and nays, which re-

sulted in the following vote by sections and the entire ordinance: Ashcraft, yea, Eliott, yea, and Webb, yea.

Certificate

I, Bonner Duggan, Clerk of the City of Greenwood, Leflore County, Mississippi, do hereby officially certify that the above, foregoing, and attached inst-ument of writing is a true and correct copy of an ordinance of the said City of Greenwood, as the same appears of record in Ordinance Book 3, at pages 241 to 243, of the ordinances of said municipality.

Witness my signature, and the seal of the said City of Greenwood, this the 29th day of November, 1932.

Bonner Duggan, Clerk of the City of Greenwood, Mississippi. (Seal.)

EXHIBIT "B" TO APPLICATION

No. 3007

Privilege Tax License

City of Greenwood, Leflore County, Mississippi

Received of H. Chassaniol the sum of fifty dollars ($50.00) Privilege License to Carry on the Business of Cotton Buyer for a term of one year from Sept. 1st, '31.

Dated at Greenwood, Mississippi, the 1st day of Oct. 1931.

[fol. 47] Countersigned:

Bonner Duggan, City Tax Collector, by H. V. Clark.

The above receipt has written on its face by pen and ink the following notation: "Paid under protest."

EXHIBIT "C" TO APPLICATION

Minute Book 13, Page 597

An Ordinance Levying an Annual Tax on Privileges Conducted Within the Limits of the Municipality Known as the City of Greenwood to an Amount Equal to Fifty per Centum of the Annual Tax Imposed on Such Privileges by the State of Mississippi under House Bill 660 of the Laws of Mississippi for 1932 and Providing Penalties

"Be it ordained by the Council of the City of Greenwood, Leflore County, Mississippi:

Section 1. That there is hereby levied an annual tax on privileges carried on and conducted within the limits of the municipality known as the City of Greenwood by all persons, firms, corporations, businesses, callings and professions described in and mentioned in House Bill #660 of the Laws of Mississippi for 1932, to an amount equal to fifty per centum of the annual tax levied on privilege described in said Chapter on each person, firm, corporation, business, calling and profession carried on in municipalities of the third class, provided, however, that no such tax shall be levied on any privilege which under the provisions of said act may be duly licensed for state-wide purposes as therein provided.

[fol. 48] Section 2. All municipal licenses shall be obtained from the City Clerk and Tax Collector at the City Hall and every person required to obtain a license for the privilege of engaging in any business included in Section 1 of this ordinance shall make application therefor to the City Clerk and Tax Collector, whose duty it shall be to issue a license to such person, and all applicants for a municipal privilege license shall show the number and date of the license that has been issued for state purposes.

Section 3. All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by the terms of this ordinance, or who shall fail to renew during the month in which it is due the license on a business for which

he has theretofore procured a privilege license, shall in each or either instance, be liable for double the amount of the tax required for such business and it is hereby made the duty of the City Tax Collector whose duty it is to collect the said tax penalties, issue a separate license for the penalty, and to endorse across the face of the license issued as a penalty the words "Collected as Damages" and the said Tax Collector shall account for all such penalties as required to account for other privilege licenses, provided, however, that the provisions of this ordinance shall not be construed as infringing upon any statutory power of any State Officer to collect due and unpaid licenses as now or may be provided for by the laws of the State of Mississippi. In addition to the hereinabove described penalty the delinquent tax payer shall be guilty of a misdemeanor for violating the provisions of this ordinance and may be fined on conviction an amount not exceeding $50.00.

Section 4. The privilege licenses provided shall be and constitute a personal privilege to the person named therein [fol. 49] to conduct the business specified in the license and shall not be transferable to any other person. No change in the name of the firm nor the taking in of a new partner nor the withdrawal of one or more of the firm shall be considered as commencing business but if any one or more of the partners remain in the firm the business shall be regarded as continued.

Section 5. It is the intention of this ordinance to levy an annual privilege tax on all privileges mentioned in and described in House Bill #660 of the Laws of Mississippi for 1932 authorized by said act to be levied by municipalities having a population of between ten thousand and fifteen thousand inhabitants being Class Three, in which the municipality of Greenwood is classed, and no privilege tax shall be imposed or levied not so authorized to be imposed and levied by municipalities of the third class according to said act and all exemptions therein mentioned shall be allowed under the terms of this ordinance.

Section 6. That if for any reason any section, paragraph provision, clause or part of this ordinance shall be held unconstitutional or invalid that fact shall not affect or destroy any other ordinance not in and of itself invalid but the remaining portion hereof shall be in force without re-

gard to that so invalidated; and all ordinances or parts thereof in conflict herewith are hereby repealed, especially ordinance entitled "An ordinance levying an annual tax on privileges conducted within the limits of the municipality, known as the city of Greenwood, to an amount equal to fifty per centum of the annual tax imposed on such privileges by the state of Mississippi under chapter 88 of the Laws of Mississippi for 1930, and providing penalties" passed June 3, 1930 and recorded in Ordinance Book 3, page 243.

Section 7. That for the immediate and temporary preservation of the public health, peace and safety and for the reasons of providing regular tax on all privileges conducted in the municipality in accordance with the new State Laws, an emergency is created and it is ordered that [fol. 50] this ordinance be enforced at and from the date of its passage.

Passed and approved this the 7th day of June, 1932.

W. K. Clements, Mayor. (Seal.)

Certified by Bonner Duggan, City Clerk.

The foregoing ordinance was introduced by Mayor W. K. Clements after being reduced to writing, read and considered by sections at a regular and public meeting of the Council of the City of Greenwood, and a vote on its final passage was taken by sections by yeas and nays which resulted in the following vote by sections and the entire ordinance: Mayor W. K. Clements, yea; Commissioner F. H. Smith, yea, and Commissioner B. B. Provine, yea.

Certificate

I, Bonner Duggan, Clerk of the City of Greenwood, Leflore County, Mississippi do hereby officially certify that the above foregoing and attached instrument of writing is a true and correct copy of an ordinance of the said City of Greenwood, as the same appears of record in Ordinance Book 5, pages 26 and 27, of the ordinances of said municipality.

Witness my signature, and the seal of the said City of Greenwood, this the 29th day of November, 1932.

Bonner Duggan, Clerk of the City of Greenwood, Mississippi. (Seal).

EXHIBIT "D" TO APPLICATION

Privilege Tax License

No. 3034

City of Greenwood, Leflore County, Mississippi

Received of Chassaniol & Co. the sum of fifty dollars ($50.00) Privilege License to carry on the business of cot-
[fol. 51] ton buyer for a term of one year from the date hereof.

Dated at Greenwood, Mississippi, the 1st day of September, 1932.

Countersigned:

Bonner Duggan, City Tax Collector, by Lillie Belle Dayton.

The above receipt has written on its face by pen and ink the following notation: "Paid under protest."

Thereupon the original ordinances, certified copies of which are attached to said application as Exhibits "A" and "C", respectively, were by the said applicant offered and introduced in evidence by use of the original ordinance books of said municipality containing said ordinances, and said ordinances were by the Council checked and compared with the aforesaid exhibits and said exhibits were found to be true and correct copies of said ordinances respectively.

Thereupon the said applicant offered and introduced the originals of the two privilege tax license receipts, copies of which are made Exhibits "B" and "D" respectively, to said application, and said receipts were by the board checked and compared with said exhibits and said exhibits were found to be true and correct copies of said receipts.

Thereupon the aforesaid verified application in its entirety, including Exhibits "A", "B", "C" and "D" thereto, was offered and introduced by the said applicant in evidence, and it was agreed — the City Council that the facts alleged in said verified application should be admitted as evidence, and the same were so admitted.

Thereupon the following order by the board was made and entered:

ORDER AS TO ADMISSION OF EVIDENCE

"By agreement with H. Chassaniol, it is ordered that all facts alleged in the verified application of said H. [fol. 52] Chassaniol for refund of privilege license be admitted as evidence."

Thereupon, the City Council, after due consideration of said application and of the aforesaid facts, made and entered the following order:

ORDER DISALLOWING CLAIM OF H. CHASSANIOL FOR REFUND OF PRIVILEGE LICENSE FOR YEARS 1931 AND 1932 FOR DOING BUSINESS AS A COTTON BUYER AND SHIPPER

This day came on for consideration the written application of H. Chassaniol for a refund of privilege license paid to the City of Greenwood for the years 1931 and 1932, for engaging in the business of buying and selling cotton in the City of Greenwood, and the Council having considered said application, doth find that the said refund should not be made, and that the said Claim is not due to the said H. Chassaniol.

It is, therefore, ordered and considered that the claim of H. Chassaniol for privilege license for engaging in the business of buying and selling cotton for the years of 1931 and 1932, be and the same is hereby found not to be due, and said claim is disallowed."

Thereupon it was agreed and consented to by and between the City Council and the applicant that the city clerk shall forthwith transmit this bill of exceptions to the clerk of the circuit court of Leflore County, and that said court may hear and determine the same and enter judgment in vacation, before the next regular term, all with the same effect as if in term time.

Thereupon the said H. Chassaniol, applicant, agreeing and consenting, an order was duly made and entered by the board, as follows:

ORDER TO TRANSMIT BILL OF EXCEPTIONS

"The applicant, H. Chassaniol, agreeing and consenting, it is ordered that the bill of exceptions which he has presented to the Mayor in the matter of his claim for a refund

of privilege licenses alleged by him to have been erroneously paid, payment of which is shown by privilege tax [fol. 53] license receipts Nos. 3007 and 3034, shall, after the same has been signed by the Mayor, be transmitted forthwith by the City Clerk to the clerk of the circuit court of Leflore County, Mississippi, and that said court may hear and determine said cause and enter judgment therein in vacation before the next regular term of said court, and all with the same effect as if in term time."

ORDER SETTLING BILL OF EXCEPTIONS

And for as much as the matters above set forth do not fully appear of record, the applicant tenders this his bill of exceptions and prays that the same may be signed and sealed by the Mayor of said municipality, who is the President of the said City Council, at and during and before any adjournment of the aforesaid regular meeting of said Council, pursuant to the statute in such case made; which is done accordingly, this the 6th day of December 1932.

W. K. Clements, Mayor of the City of Greenwood, Leflore County, Mississippi, and President of the City Council of Said Municipality. (Seal.)

Clerk's certificate to foregoing bill of exceptions omitted in printing.

[fol. 54] IN CIRCUIT COURT OF LEFLORE COUNTY, MISSISSIPPI

In Vacation, 1932

9333

H. CHASSANIOL, Appellant,

vs.

CITY OF GREENWOOD, Appellee

JUDGMENT

Came on this day this cause to be heard by agreement of the parties in vacation on appeal from a judgment of the City Council of the City of Greenwood, Leflore County,

Mississippi, finding not due and disallowing the claim of H. Chassaniol for refund of privilege taxes; and the Court having heard and considered said appeal on the bill of exceptions herein and being fully advised in the premises and being of the opinion that the judgment of the said City Council should be affirmed;

It is, therefore, ordered that said judgment be and the same is hereby affirmed.

Ordered and adjudged, in vacation, this the 10th day of December, 1932.

S. F. Davis, Judge of the Circuit Court of Leflore County, Mississippi.

O. K. A. H. Bell.
O. K. Ward Allen.

Minute Book 10, at page 188.

[fol. 55] Bond on appeal to Supreme Court of Mississippi for $500.00, approved and filed Dec. 12, 1932, omitted in printing.

[fol. 56] IN SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERROR—Filed Jan. 6, 1933

Comes the appellant, by his attorney, and assigns error, as follows:

I

The Circuit Court erred in affirming the order of the Municipal Board of the City of Greenwood, Mississippi, which order found not due and disallowed appellant's claim for a refund of taxes.

Ward Allen, Attorney for Appellant.

I hereby certify that I have this the 4th day of January, 1933, mailed, postage prepaid, to Mr. A. H. Bell, Greenwood, Miss., attorney for appellee, a true copy of this assignment of error.

Ward Allen, Attorney for Appellant.

[File endorsement omitted.]

[fol. 57] IN SUPREME COURT OF MISSISSIPPI

Monday Morning, June 5th, 1933. En Banc. Minute Book B. E., page 199.

30494

W. H. CHASSANIOL

vs.

CITY OF GREENWOOD

30495

R. F. SABIN

vs.

CITY OF GREENWOOD

FINAL JUDGMENT

These causes having been consolidated and submitted at a former day of this term on the record herein from the Circuit Court of Leflore County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgments of said Circuit Court rendered in these causes on the 10th day of December, 1932, be and the same are hereby affirmed. It is further ordered and adjudged that the appellees do have and recover of and from the appellants and B. B. Provine, W. F. Levy, R. F. Sabin and H. Chassaniol, sureties on the appeal bonds herein all of the costs of this appeal to be taxed, etc.

[fol. 58] IN SUPREME COURT OF MISSISSIPPI

En Banc

Numbers 30,494 & 30,495

W. H. CHASANIOL

v.

CITY OF GREENWOOD

R. F. SABIN

v.

CITY OF GREENWOOD

OPINION—Filed June 5, 1933

ETHRIDGE, J.:

These two cases were separately appealed from the Circuit Court of LeFlore County, and involve the constitutionality of certain provisions of Chapter 88, Laws of 1930, and Chapter 89, Laws of 1932. Section 55, of Chapter 88, Laws of 1930, imposes a privilege tax of $25.00 upon each cotton broker who buys and sells cotton, not licensed as a cotton buyer; Section 56 imposes a privilege tax of $100.00 upon every person buying and selling cotton for himself; while Section 58 imposes a tax of $25.00 on each cotton factor or merchant who receives cotton on consignment for sale.

Section 61, Chapter 89, Laws of 1932, imposes a tax of $25.00 on each cotton broker or agent engaged in buying and selling cotton, not licenced as a cotton buyer; Section 62 imposes a tax of $25.00 on every person engaged in buying and selling cotton; Section 64 imposes a tax of $25.00 on each factor or merchant receiving cotton on consignment for sale on which he charges a commission.

The City of Greenwood, under the statute authorizing [fol. 59] it to do so, levied a municipal privilege tax of $50.00, on persons selling and buying cotton, and each of the appellants paid to the City said tax, Sabin having paid without protest, and Chassanoil paid said tax under protest.

Afterwards, the said parties petitioned the City for re-

fund of the amounts so paid, aggregating above $50.00 in each case. The application for a refund was made under the provisions of Section 2591, Code of 1930.

The City of Greenwood denied a refund, and there was an appeal from the order of the City denying same, to the Circuit Court, and, after a full hearing, the Circuit Court also denied the application for refunds to these parties.

By agreement between the City of Greenwood and the appellants, the petition presented to the City authorities was treated as stating the facts. This petition recited that the appellants, Chassanoil and Sabin, were engaged in Greenwood, Mississippi, from Sept. 1st, 1931, to Sept. 1st, 1932, in the business of cotton buyers and sellers; that on June 3, 1930, the municipality adopted an ordinance levying upon said business an annual privilege tax of $50.00 in each case, and, under the color of said ordinance, required appellants to pay for the privilege of conducting this business for one year, as evidenced by receipts. In one case, as above stated, payment was made under protest, and, in the other, without protest: On September 1st, 1932, the municipality required the appellants to pay said tax. It was further recited that the Mississippi Delta, composed of alluvial soil, comprises about 6,650 square miles, and is peculiarly adaptable to grow what is known as "Delta-Type, long staple cotton", recognized throughout the world as being of a superior type, strength and character; that the City of Greenwood is located in the Mississippi Delta, which is exclusively an agricultural community, the prin-
[fol. 60] cipal crop of which is long staple cotton, producing, approximately, 700,000 bales which is more than forty per cent of the total cotton crop in Mississippi. That said cotton is sold upon the open market and constitutes the principal revenue of the entire Delta. It is further recited that by the uniform and general custom bales of cotton are transported by rail or otherwise, to compresses; that a compress is a combination storage warehouse and compres-, and that approximately thirty per cent of the cotton bought and sold upon said market in Greenwood is transported to the compress by automobile, truck or wagon, and approximately seventy per cent is transported to said compresses by rail, on common carriers engaged in interstate commerce; that there are three compresses in Greenwood, all of which comply with all of the terms and provisions

of the "United States Warehouse Act", Chap. 10, Title 7, U. S. C. A., and that cotton is stored and handled therein for interstate and foreign commerce. That when cotton is delivered to the compresses it is graded and classed by persons licensed as classers by the United States Department of Agriculture, unless such grading and classing is waived by the owner. That there is an active market for the sale and purchase of cotton at Greenwood between the farmers raising the cotton, and those purchasing same with the invariable intention and purpose of selling and transporting same in interstate and foreign commerce, and that this has been the universal custom for more than twenty years. The price upon which said cotton is sold is determined by the value of said cotton at certain exchanges in New Orleans, New York, and Liverpool, England, and there are brokers in Greenwood who receive daily by wire quotations from said exchanges fixing and determining the price of cotton at Greenwood. All of said cotton, however, is bought with the uniform purpose to transport same in interstate and foreign commerce to cotton mills located in Georgia, South and North Carolina and Tennessee, and the New England states, none of said cotton being spun or uti- [fol. 61] lized within the confines of Mississippi. It is further recited that when the destination of said cotton is determined, the said carriers load it out on shipping instructions of the owner, and charge the through freight rate from the point of origin to the point of destination, instead of charging the combined rate for carriage in intrastate commerce from the point of origin to Greenwood, plus the charge for carriage in interstate commerce from Greenwood to the point of destination. That some growers ship all of their cotton to the compresses by rail, others transport by truck, automobile or wagon, while still others ship a portion by rail and the remainder by truck, automobile or wagon; and that the buyers purchases or handles cotton indiscriminately, however transported, but, in order to buy, they are compelled to buy some cotton transported by truck or wagon for the reason that such purchases are necessary to fill out and complete orders. It is recited that warehouse receipts are issued by compresses to growers or factors, and that in Greenwood, there are a number of such factors, and the cotton is sold to the buyers and shippers upon the basis disclosed by the samples of

said cotton and by the endorsement and delivery of the warehouse receipts evidencing the ownership of the cotton. It is then recited that the uniform custom among buyers, shippers and sellers, is that the buyer enters into a contract for either the future or immediate delivery of a certain number of bales of cotton of a certain grade, and staple, obligating himself to deliver to a mill in a foreign state or country such cotton at a given price, and that, thereupon, such buyer will go upon said market at Greenwood and purchase cotton of the kind which he is obligated to deliver to his customer, and will cause the delivery of said cotton in interstate or foreign commerce; that a very small proportion of the cotton purchased by shippers (not exceeding ten per cent), is bought when no contract for sale thereof exists; but, in such cases, it is bought with the sole anticipation and intention to procure a sale thereof [fol. 62] to a foreign cotton mill or foreign cotton merchant and to cause the same to be transported in interstate or foreign commerce, for the purpose of filling specific contracts with mills located in foreign states and in foreign countries. That the buyer cannot fill his orders without buying lots of cotton in their entirety because growers will sell no other way, and that, thereby, buyers accumulate small stocks of cotton, not exceeding ten per cent of the amount they handle, being only a necessary incident to and concomitant of those purchases which are made for the purpose of filling specific contracts.

The constitutionality of the Act in question, and of the ordinance of the City of Greenwood, depends upon the construction placed upon the enactment of the statute by the Legislature.

It has long been settled in this State that in construing a statute, a construction will be placed upon it, if reasonably possible, to render it constitutional and to carry out the purpose of the Legislature. It is well known to experienced lawyers, and to the Legislature, that the State has no power to tax interstate commerce; that is, it has no power to impose a tax on the right to engage in interstate commerce. Statutes must be construed then to reflect the evident and manifest purpose of the Legislature to tax intrastate commerce, and not to levy a tax upon that which they have no constitutional power to tax. Many years ago, this court, in Pullman Co. v. Adams, Rev. Agt. 78 Miss. 814, 30

So. 757, 84 Am. St. Rep. 647, held that the Code of 1892, Section 3387, authorizing a privilege tax on each sleeping car of $100.00, and in addition a tax of twenty-five cents a mile for each mile of railroad over which it runs, affected only the business done in the State, and was not unconstitutional as interfering with interstate commerce. That under this statute the company could not take out a license [fol. 63] or pay a tax for doing interstate business, and that the statute was valid.

This case was a stronger case for holding that interstate business is not taxable than the one we have before us, because Section 195 of the Constitution declares that sleeping cars are common carriers. In that case, in the Mississippi report, Vol. 78, page 829, Judge Whitfield, speaking for the court, said:

"The whole purpose of this statute, from its terms, manifestly is to require a privilege tax to be paid for doing business within this State, and for that business alone. It relates exclusively to the local business done by the Pullman Company with in this State. It does not require any tax be paid for the privilege of doing the interstate business of the company. It does not, in any manner, affect its interstate business. 'It can conduct its interstate business without paying the slightest heed to the act, because it does not apply to or in any degree affect the company in regard to that portion of its business which it has the right to conduct without regulation from the state' "; citing Osborne v. Florida, 164 U. S. 650, as decisive of this case, The case of Pullman v. Adams, supra, was appealed to the Supreme Court of the United States, and is reported in 189 U. S. 419, 23 S. C. 494, 47 L. Ed. 877.

Our court had occasion later to construe another statute levying a privilege tax upon railroads engaged in intrastate commerce See N. O. M. and C. R. R. Co. v. State, 110 Miss. 290, 70 So. 355. This case involved the imposition, by Chapter 102, Laws of 1912, of a tax, and the court held that the privilege tax there imposed was for doing purely intrastate business, saying as follows: "The tax for the privilege of doing business in Mississippi is upon the mileage of railroads in Mississippi, and not only is this true, but the Legislature, in an apparent effort to be reasonable, has fixed the maximum rate per mile, and consequently a maximum amount beyond which the tax in no case could

run. In this regard, it falls within the principle announced [fol. 64] by the supreme court of the United States in Baltic Mining Co. v. Massachusetts, 231 U. S. 68, 34 Sup. Ct. 15; 58 L. Ed. 127, as follows, 'So, if the tax is, as we hold it to be, levied upon a legitimate subject of such taxation, it is not void because imposed upon property beyond the state's jurisdiction, for the property itself is not taxed. Insofar as it is represented in the authorized capital stock, it is used only as a measure of taxation, and as we have seen, such measure may be found in property or in the receipts from property not in themselves taxable.'" On page 305, the court said, "We cannot give to general provisions of any statute a meaning that would lead to absurdity, or that would convict the Legislature of attempting to deal with a subject clearly beyond its jurisdiction. The spirit and reason of the law certainly prevail over the strict letter. Furthermore, there is room for applying the words 'gross earnings' in this statute to the gross earnings derived from the intrastate business, and not to the gross earnings of the entire system of an interstate railroad."

These cases cited were decided by this court many years ago, and the Legislature must have been familiar therewith, and must have relied upon them in the use of the general language it used. This rule of construction is perfectly sound, and we are sure that it was the purpose of the Legislature to limit the tax here imposed upon intrastate commerce.

In passing upon the constitutionality of a statute, we cannot accept as binding agreements that are merely conclusions from facts, nor can we accept the understanding of the parties litigant as to the general course of business dealing. These agreements may suffice to settle the rights of the parties between themselves, but they cannot overturn the statutes. The Legislature has facilities and opportunities for knowing business customs and conditions within the State. There is, in fact, much buying and selling of cotton in this state that is, in no sense, interstate [fol. 65] commerce, and the Legislature knew this to be true. Cotton is a great commodity of this State and is bought and sold by people engaged in intrastate business to a considerable degree, at a considerable profit. The State raises a considerable revenue from the privilege taxes. The activities of the State and its subordinate divi-

sions are vastly important, and, in recent years, the State has been forced to schemes of taxation to raise revenue that formerly did not exist. But, through many years, the privilege taxes have consfituted an important element of the State's revenue system.

Under the agreed facts, there is a considerable portion of cotton business at Greenwood that is intrastate, rather than interstate, commerce. It is agreed that thirty per cent of the cotton brought into Greenwood and stored there is brought in by trucks, automobiles and wagons, and not placed in interstate commerce at the time it is stored in the warehouses, nor, in any sense, consigned to any person for shipment in interstate commerce when sales are made. The Supreme Court of the United States has held as to cotton so stored that it does not become a part of interstate commerce. The beginning of interstate commerce is the time when the goods begin their interstate journey thus passing beyond the state's authority into domestic or Federal control. Lemke v. Farmers Grain Co., 258 U. S. 50, 60 L. Ed. 458, 42 S. C. 244; Schafer v. Farmers Grain Co., 268 U. S. 189, 69 L. Ed. 909; General Oil Co. v. Crain, 209 U. S. 211, 52 L. Ed. 754; McCluskey v. Money, 243 U. S. 36, 61 L. Ed. 579; Hammer v. Dagenhart, 247 U. S. 251, 62 L. Ed. 1101.

The essential character of commerce, not the accident of through bills of lading, is its continuity of movement in foreign commerce, and that determines Federal or state control over it. And it takes character as interstate or foreign commerce when it is actually started in the course of transportation to another state or to a foreign country. R. R. Commission v. Texas and P. R. Co., 229 U. S. 336, 57 L. Ed. 1215. See also I. C. R. R. Co. v. DeFuentes, 236 U. S., 59 L. Ed. 517 and R. R. Co. v. Worthington, 225 [fol. 66] U. S. 101, 56 L. Ed. 1004.

In the case of Superior Oil Co. v. Mississippi, 280 U. S. 390, 74 L. Ed. 507, it was held that the sale of gasoline was not converted into an interstate transaction so as to render inapplicable a state gasoline sales tax, by the fact that the gasoline is transported on boats operated by the purchaser into another state, for resale there, under a so-called bill of lading, naming the purchaser as consignee and reciting that the gasoline should remain the property of the seller until delivered to consignee or his agent at the point of

destination, since it was optional with the purchaser whether he would carry it out of the state or not.

In the case before us, as to the thirty per cent that is transported by trucks and wagons or other private conveyances and placed in storage in Greenwood, and not consigned to any one outside the State, nor sold to any one outside the State, the property is not in interstate commerce. The owner might withdraw it, or sell it, whenever he pleases.

The transaction is to be determined by its facts, and not by a fantastic and far fetched consideration.

In the case of Superior Oil Co. v. Mississippi, 280 U. S. 393, 74 L. Ed. 507, in the course of the opinion the court said; "The document hardly can affect the case because 'it is not within the power of the parties, by the form of their contract to convert what was exclusively a local business, subject to State control, into an interstate commerce business protected by the commerce clause (Browning v. Waycross, 233 U. S. 16, 58 L. Ed. 828, 34 Sup. Ct. 578); at least, when the contract achieves nothing else. The importance of the commerce clause to the Union, of course, is very great. But it also is important to prevent that clause being used to deprive the states of their lifeblood by a strained interpretation of facts."

In the case of Lawrence v. Tax Commission, 286 U. S. [fol. 67] 276, 52 S. C. 556, 76 L. Ed. 1102, the Supreme Court of the United States held that the Federal Constitution, apart from the specific grant to the Federal Government of the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state, or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment. It is true that this case did not involve a privilege tax, but an income tax; however, the principle that the state can levy taxes on privileges enjoyed therein is applicable here where the transaction applies, as we hold it does, to intrastate business alone. See State v. G. M. & N. R. Co., 138 Miss. 70, 104 So. 689; Coe v. Erroll, 116 U. S. 517, 29 L. Ed. 715; Carson Petroleum Co. v. Vial, 279 U. S. 94, 73 L. Ed. 626; Nashville C. & St. L. R. Co. v. Wallace, 77 L. Ed., Advance Sheets, 444.

The appellants rely strongly upon the case of Bowman v. Continental Oil Co., 256 U. S. 642, 41 S. C. 606, 65 L. Ed. 1139; but in that case the general language of the statute had not been interpreted by the state court so as to limit the privilege tax there enacted to intrastate commerce. The court, in the absence of a construction by the state court, held that the general language covered both intrastate and interstate commerce, and that the act was not acceptable.

The meaning of a statute is for the determination of a state court, and the federal courts are bound by the *the* construction of the state court. Anglo-Chilean Nitrate Sales Corp. v. Ala, 77 L. Ed., Advance Sheets, page 451. Sec. U. S. Dig. (L. Coop. Co.) "Courts", sec. 789. Our construction accords with former decisions of our own State upon the construction of statutes.

[fol. 68] The Lemke and Shafer cases (the Dakota grain cases) supra, relied upon by the appellants, are easily differentiated from the case before us. In those cases the state law undertook to place certain requirements on grain shipments, and thus imposed stringent regulations calculated to embarrass and impede the shipment of grain from the state.

The cases relied upon by the appellants can all be differentiated from the case before us. It does not matter whether the intrastate business done was nearly equal to the interstate business, the state's control over the intrastate business is full and complete, subject only to the provisions of the Federal Constitution. The powers of the state, not given to the United States government by the Federal Constitution, are reserved to the state or the people. The state constitutes an essential unit in the federal scheme, and the state should not be embarrassed in the operation of its functions within its sphere, but should be left to discharge those functions according to its own conception thereof. This nation, as it was founded, cannot exist without the states fulfilling their proper functions in the scheme. The importance of the powers and rights of the states have not been magnified, and have been frequently overlooked. The power of the state is not restricted except by the Federal Constitution or the State Constitution.

That which is inherent in intrastate commerce does not lose its essential nature when it becomes a part of transactions in interstate commerce. Foote Mfg. Co. v. Collen, 247 U. S. 21, 62 L. Ed. 693.

The constitutional equality of the states is essential to the harmonious operation of the scheme upon which the Republic was organized. This country is an indestructible union of indestructible states. Coyle v. Smith, 221 U. S. 559, 55 L. Ed. 853; White v. Hart et al., 80 U. S. 646, 20 L. Ed. 685. In Texas v. White, 7 Wall. 700, 19 L. Ed. 227, it was held that if a state would exercise its sovereign [fol. 69] power, then it must be permitted to exercise its legitimate power in all legitimate ways.

When considered in the light of these authorities, the agreement entered into between the City of Greenwood and the appellants does not, on its facts, make a case which taxes interstate commerce. If the court should make mistakes in applying the State law as to what interstate commerce is, it does not affect the statute before us. The intention of the Legislature was not to tax interstate commerce, and whether administrative officers or judicial bodies err in determining a particular transaction not to be interstate commerce, does not affect the statute itself, but only involves a misapplication of the statute.

We find no reversible error and the judgment will be affirmed.

Affirmed.

[File endorsement omitted.]

[fol. 70] IN SUPREME COURT OF MISSISSIPPI

En Banc

Nos. 30,494 & 30,495

W. H. CHASSANOIL

vs.

CITY OF GREENWOOD

R. F. SABIN

vs.

CITY OF GREENWOOD

DISSENTING OPINION—Filed June 5, 1933

ANDERSON, J., dissenting:

The facts of these cases were not agreed to, but are not in dispute. Appellee offered no evidence at the conclusion of appellants' but agreed that appellants' petition for the refund of the taxes, and the exhibits thereto, should be admitted in evidence. This was done and constituted all the evidence in the case.

The outstanding and controlling facts are that all the long staple cotton produced in this state ultimately goes into interstate commerce, none of it is manufactured within the borders of the state. The long staple cotton produced in the Greenwood territory is concentrated at three compresses in Greenwood for the purposes of compression, sale and shipment in interstate commerce. Appellants and other cotton buyers at Greenwood purchase the cotton from the producers and merchants who own it to fill contracts of sale theretofore made by them to mills and other buyers in other states and foreign countries; in doing so, they are forced to purchase something like an average of ten per cent more cotton than is necessary to fill their contracts. This results from the fact that the owners of the cotton are not willing to split their sales so as to meet the requirements of the purchasers as to number of bales, class and grade. This average of ten per cent is sold by the buyers in the local market at Greenwood; it is generally purchased by other buyers to fill foreign contracts. The result is that ninety per cent of the cotton purchased by appellants and other cotton buyers at Greenwood is purchased to fill [fol. 71] foreign contracts of sale, and the balance of ten per cent is sold by them locally, as above stated. The facts demonstate that the foreign business cannot be carried on without, at the same time, conducting the local business. That is true because they are so integrated into each other as to be inseparable.

The City of Greenwood, as it was authorized to do by statute, passed an ordinance, the provisions of which are indicated by its title in this language: "An ordinance levying an annual tax on privileges conducted within the limits of the municipality known as the City of Greenwood to an amount equal to fifty per centum of the annual tax imposed on such privileges by the state of Mississippi under Chap-

ter 88 of the Laws of Mississippi for 1930, and providing penalties". By section 3 of the ordinance section 225 of Chapter 88 of the Laws of 1930 was adopted. This action by the municipality was authorized by section 2549, Code of 1930, which provides, in substance, that all offenses under the penal laws of the state which are misdemeanors shall, when so provided by general ordinance of the municipality, be offenses against the municipality when committed within its corporate limits, and upon conviction thereof the same punishment shall be imposed by the municipality as is provided by the laws of the state with regard to such offenses against the state, but not in excess of the maximum penalty which may be imposed by municipal corporations.

Section 3 of the ordinance is in this language:

"All persons liable for privilege taxes who shall fail to procure the license therefor before beginning the business for which a privilege tax is required by the terms of this ordinance, or who shall fail to renew during the month in which it is due the license on a business for which he has theretofore procured a privilege license, shall in each or either instance, be liable for double the amount of the tax required for such business and it is hereby made the duty of the City Tax Collector whose duty it is to collect the tax [fol. 72] on such business, to collect the said tax penalties, issue a separate license for the tax for the penalty, and to endorse across the face of the license issued as a penalty the words 'Collected as Damages', and the said Tax Collector shall account for all such penalties as required to account for other privilege licenses, provided, however, that the provisions of this ordinance shall not be construed as infringing upon any statutory power of any State officer to collect due and unpaid licenses as now or may be provided for by the laws of the State of Mississippi. In addition to the hereinabove described penalty the delinquent tax payer shall be guilty of a misdemeanor and may be fined on conviction an amount not exceeding Fifty Dollars (50.00)."

Before getting down to the exact question involved it would be very well to have in mind the surrounding principles as declared by the Supreme Court of the United States. A product may be a part of interstate commerce before it begins its actual physical journey therein. Where goods are purchased in one state for transportation to an-

other, the purchase is interstate commerce quite as much as the transportation. Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 66 L. Ed. 239, 42 Sup. Ct. Rep. 106. The buying and selling of goods for shipment beyond state lines is interstate commerce notwithstanding that after the purchase some of the goods may be sold in local markets. Lemke v. Farmers' Grain Co., 258 U. S. 50, 66 L. Ed. 458, 42 Sup. Ct. Rep. 244. The carrying of goods from one state to another, as the result of orders previously received from the originating state, is interstate commerce, and is not subject to license fees imposed by the state into which they are shipped. Wagner v. Covington, 251 U. S. 95, 64 L. Ed. 157, 40 Sup. Ct. Rep. 93. The buying of grain in one state for shipment to markets in another state, if followed by such shipment, is interstate commerce. Shafer v. Farmers' Grain Co., 268 U. S. 189, 69 L. Ed. 909, 45 Sup. Ct. Rep. 481. The negotiation for the sale of goods which [fol. 73] are in another state for the purpose of introducing them into the state into which the negotiation is made is interstate commerce. Crenshaw v. Ark., 227 U. S. 389, 57 L. Ed. 565, 33 Sup. Ct. Rep. 294; Weeks v. U. S., 245 U. S. 618, 62 L. Ed. 513, 38 Sup. Ct. Rep. 219. The sale and delivery of coal f. o. b. cars at the mine for transportation to purchasers in other states is interstate commerce. Pa. R. Co. v. Sonman, 242 U. S. 120, 61 L. Ed. 188, 37 Sup. Ct. Rep. 46. The right to solicit or take orders for interstate commerce business is a part of interstate commerce, and not subject to state regulation. Vance v. Vandercook, 170 U. S. 438, 42 L. Ed. 1100, 18 Sup. Ct. Rep. 674. Where a commodity is a part of an actual constant and flowing stream out of a state from which the owner may draw part of it for use in the state before reaching the state border, a tax on the flow is a burden on interstate commerce which the state cannot impose. Such a flow in interstate commerce is a reasonable class of business. Stafford v. Wallace, 258 U. S. 495, 66 L. Ed. 735, 42 Sup. Ct. Rep. 397, 23 A. L. R. 229. A tax on flowing commerce does not become valid and constitutional because it applies to domestic commerce as well. Crew-Levick Co. v. Pa. 245 U. S. 292, 62 L. Ed. 295, 38 Sup. Ct. Rep. 126. A person cannot be required to pay a state line tax for the mere privilege of carrying on interstate or foreign commerce. Sault, etc. v. International Transit Co., 234 U. S. 333, 58 L. Ed. 1337, 34 Sup. Ct. Rep. 826; Crutcher v. Ky., 141 U. S. 47, 35 L. Ed. 649, 11 Sup. Ct. Rep. 851.

Now coming directly to the question involved, the case of Bowman v. Continental Oil Co., 256 U. S. 642, 65 L. Ed. 1139, 41 Sup. Ct. Rep. 606, is decisive of the question—it is squarely in point. The principles there laid down govern; there is no escape. The ordinance in question imposes an unconstitutional burden on interstate commerce. A statute of the state of New Mexico imposed an excise tax of two cents for each gallon of gasoline sold or used, and an [fol. 74] annual license tax of Fifty Dollars for each distributing station or place of business. The Continental Oil Company was engaged in both domestic and interstate business, 94.5 per cent of its business was intrastate and the balance, 5.5 per cent, was interstate. The Supreme Court held the gallonage tax of two cents valid as to domestic business and invalid as to interstate business, basing its decision, as I understand it, upon the ground that the two classes of business were separable—one could be carried on without the other. However, as to the privilege license of Fifty Dollars, the court held that the two classes of business could not be separated, that by the terms of the statute and its legal operation and effect this tax was imposed generally upon the entire business conducted, including interstate commerce as well as domestic, and that the tax was therefore void. The court used this language in deciding the case:

"The act, in its 2d section, requires every distributor of gasolene to pay an annual license tax of $50 for each distributing station or place of business or agency; requires it to be paid in advance; and renders it unlawful to carry on the business without having paid it. Section 8 declares that any person who shall engage or continue in the business of selling gasolene without a license shall be deemed guilty of a misdemeanor, and, upon conviction, be punished by fine or imprisonment, or both. The subject taxed is not in its nature divisible, as in the case of the excise tax. The imposition falls upon the entire business indiscriminately; and so does the prohibition against the further conduct of business without making the payment. By accepted canons of construction, the provisions of the act in respect of this tax are not capable of separation, so as to confine them to domestic trade, leaving interstate commerce exempt. United States v. Reese, 92 U. S. 214, 221, 23 L. ed. 563, 565; Trade-Mark Cases, 100 U. S. 82,

99, 25 L. ed. 550, 553; Poindexter v. Greenhow, 114 U. S. 270, 304, 305, 29 L. Ed. 185, 197, 198, 5 Sup. Ct. Rep. 903, 962; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, [fol. 75] 636, 39 L. e. 1108, 1125, 15 Sup. Ct. Rep. 912.

"No doubt the state might impose a license tax upon the distribution and sale of gasolene in domestic commerce if if did not make its payment a condition of carrying on interstate or foreign commerce. But the state has not done this by any act of legislation. Its executive and administrative officials have disavowed a purpose to exact payment of the license tax for the privilege of carrying on interstate commerce. But the difficulty is that, since plaintiff, so far as appears, necessarily conducts its interstate and domestic commerce in gasolene indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the statute—that is to say, without authority of law. Hence, it cannot be enforced at all."

The ordinance of the City of Greenwood, as did the New Mexico statute, requires the payment of the license tax in advance, renders it unlawful to carry on the business without the payment of the tax and provides that any person engaging in the business without obtaining the license is guilty of a misdemeanor, and on conviction subject to fine and imprisonment, or both, and in addition provides that he shall pay double the amount of the tax required.

Lemke v. Farmers' Grain Co., 258 U. S. 50, 66 L. Ed. 458, 42 Sup. Ct. Rep. 244, also strongly supports the contention of appellants. It was held in that case that the business of buying grain in North Dakota, practically all of which was intended for shipment to and sale at terminal points in other states conformable to the usual and general course of business in the grain trade, was interstate commerce which a state could not regulate by a statute having the effect of burdening such commerce. The court held further that the essential feature of a state statute could not be eliminated by the courts for the purpose of saving the constitutionality of other parts of the [fol. 76] statute.

The cases referred to and relied on in the majority opinion to sustain the legality of this tax are not in point,

for in each of those cases the domestic and interstate business were separable, and the tax imposed, therefore, could be and was allocated to the domestic business, and left the interstate business untouched. That is not true of the tax here. The two classes of business are inseparable, the foreign commerce could not be carried on without the domestic business, the latter was a concomitant. The tax cannot be laid alone against the domestic business—the overage of ten per cent—for in taxing that the interstate business is necessarily taxed, for the simple reason that it cannot be carried on without this overage. In other words, under the facts in this case the overage is as much a part of the interstate commerce as the ninety per cent. Appellants had the right, and did everything in their power, to carry on interstate commerce exclusively, but under the conditions existing they could not do so without carrying along this overage of ten per cent. This being true, the state could not tax one without taxing the other. If the state could reach down into the stream of interstate commerce and dip out the domestic business for state regulation without hampering the free flow of the stream, its regulation would be valid. On the other hand, if the separation of the domestic business from the foreign would interfere with the free flow of the stream, the action of the state would be illegal.

[File endorsement omitted.]

[fol. 77] IN SUPREME COURT OF MISSISSIPPI

Monday Morning, June 12th, 1933. En Banc. Minute Book B. E., page 210

30494

H. CHASSANIOL

vs.

CITY OF GREENWOOD

JUDGMENT ON SUGGESTION OF ERROR

This cause this day came on to be heard on the suggestion of error filed herein and this court having suffi-

ciently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.

[fol. 78] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 79] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO RECORD—Filed Sept. 5, 1933

Pursuant to Rule 13, Subdivision (9), the appellants rely upon the following points:

1. That the State court erred in holding that the City of Greenwood was not liable to the appellant, H. Chassaniol, for all privilege taxes herein sought to be recovered, in this, that:

(a) The appellant was engaged solely and exclusively in interstate commerce, and the tax sought to be recovered by appellant by the terms of its imposition taxed the privilege of engaging in such commerce.

(b) That said tax was severable.

2. That the ordinances imposing said tax and the statutes authorizing the said ordinances are as to said tax in contravention of the commerce clause of the Federal Constitution, in this, that that done by appellant, H. Chassaniol, was and is interstate commerce, and of him was exacted a privilege tax for doing that which under the Constitution he had a right to do freed therefrom.

3. That the record herein presented shows conclusively specific facts wherefrom it demonstrably appears that appellant as to that done was engaged solely in interstate commerce, and therefor was unconstitutionally taxed.

4. The Supreme Court of the State of Mississippi, being the highest court wherein this question of statutory construction might be had, denied the contention of appellant, [fol. 80] H. Chassaniol, that his business was interstate

commerce, and erroneously held that the business by him done as hereinafter reflected was taxable by the State of Mississippi as intrastate commerce, and that the ordinances and statutes were valid in virtue thereof.

5. The Supreme Court of the United States, in determining what is interstate commerce and what may be taxed by the State exercises a Federal function, which is not in any way dominated by State decisions.

6. Appellants aver that Section 56, Chapter 88, Laws of 1930, providing:

"Every person engaged in the business of buying or selling cotton for himself shall pay a privilege tax of one hundred ($100.00) dollars; but, where a cotton buyer only buys cotton from one gin in only one county or buys from the producers in only one municipality, said privilege tax is twenty-five dollars ($25.00); the license must be issued in his name; and may be paid on or before the first day of September for a full year; only the municipality of his residence can collect a municipal privilege tax of him. Every individual, firm, partnership or corporation engaged in the business of buying or selling cotton shall take out in his or their name a state privilege tax of twenty-five dollars ($25.00) for every employee engaged in their business as buyer or seller, on or before the first day of September; such privilege tax shall authorize the buying or selling cotton by its bearer; and it shall be unlawful for any employee to buy or sell cotton without a privilege tax in his possession, issued in the name of his employer. Such licenses cannot be issued for less than a year. If the individual, firm, partnership, or corporation take out a municipal privilege in his or their name for the municipality of the residence of their employee and take out also, the state privilege tax imposed on them above, such employee shall have the authority to buy or sell cotton in any other municipality of the state, without paying any further state [fol. 81] or municipal privilege tax. But the above privilege taxes shall not be required of any landlord or other person who receives cotton in payment of accounts due him, nor of any merchant who pays a privilege tax on a store and who purchases only from the producer at the place of business of such merchant, nor to cotton mills

domiciled in Mississippi where the cotton is purchased for manufacturing purposes."

contravenes the commerce clause of the Federal Constitution, and that the municipal ordinance adopted by the City of Greenwood imposing the tax thereunder authorized is void, insofar as the business of appellant, H. Chassaniol, is concerned.

7. Appellants aver that Section 62, Chapter 89, Laws of Mississippi of 1932, providing:

"Upon every person engaged in the business of buying or selling cotton for himself, as follows:

When less than 2,500 bales are handled annually—$25.00.
When 2,500 bales and less than 5,000 are handled annually—$50.00.
When 5,000 bales or more are handled annually—$100.00.
Upon each person buying or selling cotton as an agent for a licensed cotton buyer—$25.00.

"But this section shall not apply to any landlord, merchant, or other person who only receives cotton in payment of accounts due him, or to cotton mills domiciled in Mississippi where the cotton is purchased for manufacturing purposes."

contravenes the Commerce Clause of the Federal Constitution, and that the municipal ordinance adopted by the city of Greenwood imposing the tax thereunder authorized is void, insofar as the business of appellant, H. Chassaniol, is concerned.

In order to adequately present the aforesaid points, you will please print the following, as listed in the præcipe:

(1) Appellant's bill of exceptions to the action of the City Council of the City of Greenwood upon his application for a refund of taxes.

[fol. 82] (2). Final judgment of the Circuit Court of Leflore County.

(3) Appeal bond to the Supreme Court of Mississippi.

(4) Assignment of errors in Supreme Court of Mississippi.

(5) The judgment and opinions of the Supreme Court of Mississippi, including the dissenting opinion of Justice Anderson.

(6) Judgment of Supreme Court of Mississippi on suggestion of error.

(7) Appellate proceedings.

Edward W. Smith, Ward Allen, Marcellus Green, Samuel Green, for Appellants.

Service of the foregoing is hereby duly admitted, and counsel for the appellee agrees that the record may be printed as above requested, without waiting for any counter designation.

Dated this 9th day of August, 1933.

—— L. Rice, Attorney General of the State of Mississippi, by J. A. Lauderdale, Asst., A. H. Bell, W. S. Vardaman, Jr., Attorneys for Appellee.

Filed 8/12/33. Tom Q. Ellis, Clerk. E. L. Shelton, D. C.

[fol. 83] [File endorsement omitted.]

Endorsed on cover: File No. 38,031. Mississippi Supreme Court. Term No. 428. H. Chassaniol et al., appellants, vs. City of Greenwood. Filed September 5, 1933. No. 428, O. T., 1933.